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भाग 5 (घ)

भारत के निर्वाचन आयोग की विज्ञप्तियां आदि।

निर्वाचन विभाग

अधिसूचना

जयपुर, अक्टूबर 08, 2021

संख्या एफ.9(1)(1)/निर्वा./2019/5151 :– भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या 82/राजस्थान–लो0स0/(6/2019)/2021 दिनांक 20 जुलाई, 2021 मय माननीय राजस्थान उच्च न्यायालय, (जोधपुर बैन्च) के निर्णय दिनांक 27 अप्रैल, 2021 जिसमें (17) बाड़मेर लोकसभा निर्वाचन क्षेत्र की निर्वाचन अर्जी संख्या 6/2019 का निर्णय समाविष्ट है, को सर्वसाधारण के सूचनार्थ प्रकाशित किया जाता है।

प्रवीण गुप्ता,
प्रमुख शासन सचिव।

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली–110001

तारीख :– 20 जुलाई, 2021
29 आषाढ़, 1943 (शक)

अधिसूचना

सं0 82/राजस्थान–लो0स0/(6/2019)/2021 : लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 106 के अनुसरण में भारत निर्वाचन आयोग, निर्वाचन अर्जी संख्या 6/2019–श्री पंकज चौधरी बनाम श्री कैलाश चौधरी एवं अन्य में राजस्थान उच्च न्यायालय (जोधपुर बैंच) के तारीख 27 अप्रैल, 2021 के निर्णय को एतद्द्वारा प्रकाशित करता है।

आदेश से,

राहुल शर्मा,
प्रधान सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi - 110 001.

Dated:- 20th July, 2021
29 Ashadha, 1943 (SAKA)

NOTIFICATION

No. 82/RJ-HP/(6/2019)/2021/:- In pursuance of Section 106 of the Representation of People Act, 1951 the Election Commission of India hereby publishes judgment dated 27.04.2021 of the High Court of Rajasthan (Jodhpur Bench) in S.B. Election Petition No. 6 of 2019- Sh. Pankaj Choudhary Vs. Sh. Kailash Choudhary and ors.

By order,

RAHUL SHARMA
PRINCIPAL SECRETARY
ELECTION COMMISSION OF INDIA.

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Election Petition No. 6/2019

Pankaj Choudhary S/o Shri S.S. Choudhary, Aged About 44 Years, R/o II/3 Gandhi Nagar, Bajaj Nagar Marg, Jaipur.

----Petitioner

Versus

1. Kailash Choudhary, S/o Shri Taga Ram Choudhary, R/o Ward No. 32, Jat Colony, Samdari Road, Balotra, Tehsil Pachpadra, District Barmer.
2. Election Commission Of India, Through Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi.
3. Chief Election Officer, State Election Commission, Rajasthan, Jaipur.
4. Returning Officer, 17, Barmer Parliamentary Constituency Barmer.

----Respondents

For Petitioner (s) : Mr. Mohamood Pracha.
Mr. Rajak Khan Haidar.
For Respondent (s) : Mr. M.M. Dhera.

HON'BLE MR. JUSTICE ARUN BHANSALI

Reportable **Judgment**

27/04/2021

This election petition under Sections 80, 80A, 81 and 100(1) of the Representation of the People Act, 1951 ('the Act') has been filed by the petitioner calling in question the election of respondent No.1 from the Barmer Parliamentary Constituency of Rajasthan.

It is, inter alia, indicated in the petition that the Election Commission of India ('ECI') notified the following schedule for holding election to various Parliamentary Constituencies including Barmer Parliamentary Constituency as under:-

"

Sr.No.	Particulars	Date
1.	Date of issuing the gazette notification	02.04.2019
2.	Last date for filing nomination	09.04.2019
3.	Date for scrutiny of nomination	10.04.2019
4.	Last date for withdrawal of nomination	12.04.2019
5.	Date of polling	29.04.2019
6.	Date of counting/declaration of results.	23.05.2019

"

It is indicated that the petitioner is an erstwhile IPS Officer appointed by the Govt. of India in Rajasthan Cadre. He was dismissed from service vide order dated 19.02.2019 passed by the Govt. of India, Ministry of Home Affairs for violating the Conduct Rules, 1968. It is claimed that as the petitioner was a proposed candidate for the Barmer Parliamentary Constituency for Parliamentary Elections to be held between April-May, 2019, he contacted the Secretary, ECI through Fax, E-mail, WhatsApp and personally handed over a letter to the ECI on 01.04.2019 requesting issuance of certificate under Sections 9(2) and 33(3) of the Act, which was necessary for the petitioner to contest the elections.

The notification for Parliamentary Elections was issued on 02.04.2019 and as per the schedule, last date for filing nomination for Barmer Parliamentary Constituency was 09.04.2019, the scrutiny was held on 10.04.2019 and the last date of withdrawal of nomination was 12.04.2019. The petitioner filed his nomination papers for Barmer Parliamentary Constituency on 08.04.2019.

It is indicated in the petition that the nomination papers were not accompanied by certificate envisaged under Section 33(3) of the Act.

It is alleged that the ECI, despite the letter dated 01.04.2019, did not issue certificate to the petitioner, however the Under Secretary of ECI issued a letter dated 04.04.2019 to the Chief Electoral Officer, Rajasthan, Jaipur regarding miscellaneous complaints and required it to take appropriate action, in consonance, the Chief Electoral Officer, Rajasthan, Jaipur addressed a letter dated 06.04.2019 to the Secretary, ECI indicating that the certificate was required to be issued by the ECI,New Delhi.

It is then indicated in the petition that scrutiny of the nomination papers was held on 10.04.2019, the petitioner made a request to ECI on 10.04.2019 at around 1.03 PM seeking issuance of requisite certificate under Section 33(3) of the Act, however, the same was not responded to. As a result, the nomination form of the petitioner was rejected by the Returning Officer as per Section 36(2)(b) of the Act in absence of requisite certificate.

It is then indicated that the petitioner wrote a letter/representation to the ECI on 11.04.2019 indicating his interest to contest the election from Bikaner Parliamentary Constituency and again requiring it to issue certificate by 5 PM on the same date, however, as the requisite certificate was not issued, S.B. Civil Writ Petition No. 5356/2019 was filed seeking direction for issuance of certificate, wherein on 12.04.2019, a order was passed directing the ECI to pass a speaking order on or before 16.04.2019. Pursuant to the said direction, the ECI issued certificate under Section 9(2) and 33(3) of the Act indicating that the charge against the petitioner does not involve 'corruption or 'disloyalty to State'.

The petitioner on receiving the certificate applied to the Chief Electoral Officer, ECI, New Delhi praying that he must be allowed to contest election from Barmer Parliamentary Constituency, however, the same was not permitted.

Based on the above averments, the election of respondent No.1 to the Barmer Parliamentary Constituency has been called in question with the following reliefs:-

"a) The election petition may kindly be allowed.

b) The impugned order dated 10.04.2019 (Ann.1) passed by Returning Officer, Barmer Parliamentary Constituency (PC-17) (District Collector and District Magistrate), Barmer may kindly be quashed and set aside.

c) The election of the respondent No.1 Kailash Choudhary from Barmer Parliamentary Constituency (PC-17) be declared void.

d) The respondent Election Commission of India may kindly be directed to conduct the fresh election of Barmer Parliamentary Constituency (PC-17) while

considering the nomination form of the petitioner valid for contesting the election.

e) The respondent Chief Election Commissioner may kindly be directed to issue the certificate as required under Section 33(3) and 9(2) of the Act of 1951 for contesting the election of Barmer Parliamentary Constituency (PC-17).

f) Any other appropriate order or direction which this Hon'ble Court deems just and proper may kindly be passed in favour of the petitioner."

After service of summons, reply to the election petition has been filed by the respondent No.1-returned candidate raising preliminary objections to the maintainability of the election petition, inter alia, indicating that as on the date of scrutiny of the nomination forms, the petitioner was admittedly not in possession of certificate required under provisions of Section 9(2) and 33(3) of the Act, the petitioner was disqualified to contest the election and his nomination paper was rightly rejected. It was prayed that the petition be dismissed.

The ECI, New Delhi and Chief Electoral Officer, State Election Commission, respondents No. 2 and 3 respectively, though their presence were not necessary in the present petition in view of the judgments of Hon'ble Supreme Court in the case of Jyoti Basu & Ors. v. Debi Ghosal & Ors.: (1982) 1 SCC 691; B. Sundra Rami Reddy v. Election Commission & Ors.: (1991) Suppl.(2) SCC 624 and Micheal Fernandeas v. C.K. Jaffar Sharif & Ors.: AIR 2002 SC 1041, filed the reply, contesting the averments made in the present election petition.

The respondent No.4-Returning Officer also filed a reply to the petition again contesting the averments made in the petition.

The petitioner filed rejoinders to the replies filed.

Based on the pleadings of the parties, the following issues were framed by the Court on 13.01.2020:-

"(1) Whether the nomination of the petitioner was improperly rejected?

(2) Whether the election petition is liable to be rejected on account of admitted non-compliance of provisions of sub-section (3) to Section 33 of the Representation of the People Act, 1951?

(3) Relief?"

After the issues were framed, counsel for the respondent No.1 filed an application under Order XIV, Rule 2 CPC seeking decision on preliminary issue No.2.

On 27.01.2020, counsel for the respondent No.1 submitted that insofar as existence of the documents filed alongwith the election petition were concerned, they were not in dispute and the respondent No.1 admits the existence of the said documents and as the petitioner has only indicted in the list of witnesses that the witnesses are required for formal proof, the said necessity has come to an end.

Whereafter, an application came to be filed by the petitioner under Order XIV, Rule 5 CPC seeking framing of additional issues.

Arguments were heard on both the applications, one filed by the respondent No.1 under Order XIV, Rule 2 CPC and another filed by the petitioner under Order XIV, Rule 5 CPC and by order dated 18.03.2020 while the application filed by the petitioner under Order XIV, Rule 5 CPC was rejected, the application under Order XIV, Rule 2 CPC filed by the respondent No.1 was allowed and it was directed that the issues framed by the Court on 13.01.2020 shall be determined by the Court based on the pleadings and documents filed by the parties on account of the admission of existence of the documents annexed with the election petition by the respondent No.1.

It is submitted by learned counsel for the petitioner that the nomination form of the petitioner was wrongly rejected by the Returning Officer and as such, the petition was liable to be accepted in view of the provisions of Section 100(1)(c) of the Act.

Submissions were made that onus to issue the certificate was on the ECI, where the petitioner had approached in time by filing application on 01.04.2019 i.e. before the elections were notified by notification dated 02.04.2019 and efforts were made by the petitioner for issuance of the certificate so much so that even on the date of scrutiny i.e. 10.04.2019, the petitioner sent a Fax to the ECI, however, the certificate was not issued, malafidely.

It is submitted that the petitioner had to file writ petition before the Court, wherein order was passed on 12.04.2019, pursuant thereto, the certificate (Annex.-14) was issued under Section 33(3) of the Act to the petitioner indicating that the charge proved against him does not involve 'corruption' or 'disloyalty to State', which clearly shows that he petitioner fulfills the eligibility to contest the election in terms of Section 33(3) of the Act.

It was again emphasized that it was ECI, who was required to issue the certificate, which did not issue the same despite efforts made in this regard and, therefore, it cannot take benefit of its own wrong, which has resulted in improper rejection of petitioner's nomination paper.

With reference to the sequence of events starting with petitioner's application for issuance of requisite certificate on 01.04.2019 (Annex.-2) till

the issuance of certificate on 15.04.2019 (Annex.-14), it was alleged that the certificate was not issued malafidely, inasmuch as, though the application was made to the ECI, the same was wrongly forwarded to the State Election Commission, which again forwarded it back to the ECI, on which deliberately no action was taken and when the petitioner again made a fresh application on 11.04.2019 after rejection of his nomination for Barmer Parliamentary Constituency on 10.04.2019, when an order was passed by the High Court to pass a speaking order before 16.04.2019, the requisite certificate was issued on 15.04.2019, which necessarily means that if the ECI had acted bonafide, it could have issued the certificate by 05.04.2019 and as the nomination of the petitioner has been rejected only on account of provisions of Section 33(3) of the Act, the rejection of nomination paper is ex-facie wrong and, therefore, the petition deserves acceptance.

With reference to the order of the Returning Officer rejecting the nomination form of the petitioner, it was submitted that the Returning Officer is representative of the ECI and as the ECI had failed to issue the requisite certificate, the Returning Officer, couldnot have rejected the nomination form.

Further submissions were made that as the respondent No.1 has admitted the documents filed by the petitioner, the allegations made therein also stands admitted and, consequently, as the rejection of the nomination form is on account of the malafides of the ECI, the petition, deserves to be accepted and the election of the respondent No.1 deserves to be set aside.

Learned counsel for the respondent No.1 vehemently opposed the submissions. It was submitted that the provisions of Section 100(1)(c) of the Act provides for ground for declaring election to be void if the nomination has been improperly rejected. Admittedly, the petitioner was required to produce certificate under Section 33(3) of the Act alongwith his nomination form, which was admittedly missing and as such, the Returning Officer had no option but to reject the nomination form and as such, it cannot be said that the nomination of the petitioner has been wrongly rejected.

Submissions were made that the allegations sought to be made regarding the ECI malafidely not issuing the certificate, cannot be subject matter of scrutiny in the present election petition. The Court is only required to examine as to whether the nomination of the petitioner was wrongly rejected.

Further submissions were made that any subsequent event of issuance of certificate, cannot nullify the order passed by the Returning Officer, inasmuch as, the relevant date for the purpose is date of scrutiny and as admittedly on the said date, there was no certificate available as envisaged by Section 33(3) of the Act, the nomination was rightly rejected.

It was submitted that the petitioner was seeking to distort the submissions made by the respondent No.1, inasmuch as, the respondent No.1 in his submissions made before the Court on 27.01.2020 had specifically admitted the existence of the documents and had not admitted the contents

therein and in view thereof, submissions made seeking to claim that the respondent No.1 has admitted the allegations of malafide made in the documents are untenable. It was prayed that the election petition be dismissed.

Reliance was placed on judgments in K. Prabhakaran v. P. Jayarajan : (2005) 1 SCC 754 and Narendra Singh Bhati v. Ram Narain Bishnoi : AIR 1993 Raj. 130.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The issues, framed by the Court as noticed hereinbefore pertain to whether nomination of the petitioner was improperly rejected and whether the petition was liable to be rejected on account of admitted non-compliance of provisions of Section 33(3) of the Act.

The facts are not in dispute, wherein as the petitioner, who was serving as an IPS Officer, was dismissed from service by order dated 19.02.2019 on account of violation of provisions of the Conduct Rules, 1968.

Provisions of Section 9, 33(3) and 36 of the Act insofar as relevant read as under:-

"9. Disqualification for dismissal for corruption or disloyalty.–

(1) A person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of five years from the date of such dismissal.

(2) For the purposes of sub-section (1), a certificate issued by the Election Commission to the effect that a person having held office under the Government of India or under the Government of a State, has or has not been dismissed for corruption or for disloyalty to the State shall be conclusive proof of that fact:

Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State shall be issued unless an opportunity of being heard has been given to the said person.

33. Presentation of nomination paper and requirements for a valid nomination.–

(1) .....

(2) .....

(3) Where the candidate is a person who, having held any office referred to in (section 9) has been dismissed and a period of five years has not elapsed

since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

36. Scrutiny of nomination.–

(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, (reject) any nomination on any of the following grounds:-

(a) .....

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or ”

Dealing with the above provisions, Hon’ble Supreme Court in *S.M. Banerji v. Krishna Agarwal : AIR 1960 SC 368*, after noticing the provisions, inter alia, observed as under:-

“7. The foregoing provision, so far relevant to the present enquiry, may be summarised thus : If a candidate has been dismissed from the Government service and a period of five years has not elapsed since the dismissal, he will have to file along with the nomination paper a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State. <u>If it has not been done, the Returning Officer, either suo motu or on objections raised by the opposite party, has to reject the nomination.</u> If the nomination paper does not disclose any such defect and if the Returning Officer has no knowledge of that fact, he has no option but to accept the nomination.”

(emphasis supplied)

From the above provisions as well as the pronouncement of Hon'ble Supreme Court, it is apparent that a candidate, who has been dismissed from government service, will have to file alongwith the nomination form a certificate issued by the ECI to the effect that he has not been dismissed for 'corruption' or 'disloyalty to State' and if it has not been done, the Returning Officer, either suo motu or on objections raised by the opposite party, has to mandatorily reject the nomination.

The Returning Officer on the date of scrutiny, inter alia, passed the following order:-

"Scrutiny of nomination paper (S.No. 11/HP/2019/RO)

Sh. Pankaj Kumar Choudhary

- Section 36(2) and 36(2)(b) of RP Act 1951 says that Returning Officer (RO) may reject any nomination paper or his own motion if there has been a failure to comply with any of the provision of Section 33 of RP Act, 1951.

- I am aware of the fact that candidate Sh. Pankaj Kumar Choudhary has been dismissed from Indian Police Service (IPS) vide order of an even number No. 26011/61/2016-IPS-II dated 19 Feb 2019 of Ministry of Home Affairs, Government of India (copy enclosed).

- Section 33(3) read with Section 9 of RP Act, 1951 says that a person, who hold an office under Government of India, has been dismissed and a period of 5 years has not elapsed since the dismissal, shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

- In the present case, candidate Sh. Pankaj Kumar Choudhary was dismissed in the year 2019 (5 years have not elapsed since his dismissal) and the nomination paper (S.No.11/HP/2019/RO) submitted by him on dt. 08/04/2019 did not accompany the required certificate of ECI as mentioned in Section 33(3). So he cannot be deemed to be duly nominated under Section 33(3).

- Candidate Sh. Pankaj Kumar Choudhary is present today during the scrutiny of nomination papers (dt 10/04/19). He presented his case before the undersigned that he has personally appeared before the Election Commission of India on 01/04/2019 and requested for the issuance of the certificate. He also presented that ECI officials during his meeting have assured him that this is a rarest of the rare case and necessary directions will be issued by ECI to CEO Rajasthan and RO

Barmer-17 PC. He also informed that he has mailed his representation to ECI, CEO Rajasthan and RO Barmer.

I am totally convinced that the onus of submitting the certificate lies entirely on the candidate Sh. Pankaj Kumar Choudhary and a failure to do so (while submitting his nomination paper) clearly violates the provisions of section 33(3). So I am convinced that in the absence of the certificate the nomination paper in not duly nominated and hence under Section 36(2)(b), I, Himanshu Gupta (RO-Barmer-17PC) reject the nomination paper (S.No.11/HP/2019/RO) on the above mentioned grounds.

DATE: 10/04/2019"

From what has been noticed hereinbefore based on the averments made in the election petition as well as the submissions made on behalf of the petitioner, it is apparent that the nomination filed by the petitioner, did not accompany the mandatory certificate as envisaged under Section 33(3) of the Act and as such, the Returning Officer had no option, but to reject the nomination filed by the petitioner and it cannot be said that the nomination was wrongly rejected. It is also not the case of the petitioner that any such certificate was in existence as on the dateof the scrutiny of the nominations.

The point of time for judging the qualification/ disqualification of returned candidate and other candidate in an election under the Act, has been considered by Hon'ble Supreme Court in the case of K. Prabhakaran (supra), wherein it was, inter alia, laid down as under:-

"30. Under sub-clause (i) of clause (d) of sub- section (1) of Section 100 of RPA the improper acceptance of any nomination is a ground for declaring the election of the returned candidate to be void. This provision is to be read with Section 36(2)(a) which casts an obligation on the returning officer to examine the nomination papers and decide all objections to any nomination made, or on his own motion, by reference to the date fixed for the scrutiny of the nominations. Whether a candidate is qualified or not qualified or is disqualified for being chosen to fill the seat, has to be determined by reference to the date fixed for the scrutiny of nomination. That is the focal point. The names and number of candidates who will be in the fray is determined on the date of the scrutiny of the nomination papers and the constituency goes to polls. Obviously, the decision by the returning officer has to be taken on the facts as they exist on that day. The decision must be accompanied by certainty. The returning officer cannot postpone his decision nor make it conditional upon what may happen subsequent to that date. Under Section 100(1)(d)(i) of the Act the High Court has to test the correctness of the decision taken by the returning officer and

> the fact whether any nomination was improperly accepted by reference to the date of the scrutiny of the nomination as defined in Section 36(2)(a). An election petition is heard and tried by a court of law. The proceedings in election petition are independent of the election proceedings which are held by the executive. By no stretch of imagination can the proceedings in election petition be called or termed as continuation of election proceedings. The High Court trying an election petition is not hearing an appeal against the decision of the returning officer or declaration of result of a candidate.
>
> 31. With respect to the learned Judges who decided Mani Lal case the fallacy with which the judgment suffers is presumably an assumption as if the election petition proceedings are a continuation of the election proceedings. Yet, another fallacy with which the judgment, in our humble opinion, suffers is as if the High Court has to form opinion on the disqualification of a candidate at the time of pronouncing the judgment in the election petition. That is not correct. Undoubtedly, the High Court is forming an opinion on the date of judgment in the election petition but that opinion has to be formed by reference to the date of scrutiny, based not on such facts as can be fictionally deemed to have existed on a back date dictated by some subsequent event, but based on the facts as they had actually existed then, so as to find out whether the returning officer was right or wrong in his decision on scrutiny of nomination on that date i.e. the date of scrutiny. The correctness or otherwise of such decision by the returning officer cannot be left to be determined by any event which may have happened between the date of scrutiny and the date of pronouncement of the judgment by the High Court."
>
> (emphasis supplied)

It was laid down by Hon'ble Supreme Court that the decision by the Returning Officer has to be taken on the facts as they exist on the date of scrutiny, the Returning Officer cannot postpone his decision nor make it conditional upon what may happen subsequent to that date and, therefore, merely because subsequently the certificate was issued by the ECI albeit after order was passed by this Court in a writ petition filed by the petitioner, inter alia, claiming that the certificate was required for contesting elections to Bikaner Parliamentary Constituency, where the last date of scrutiny was 16.04.2019, cannot be of any consequence insofar as the rejection of petitioner's nomination by the Returning Officer on the date of scrutiny i.e. 10.04.2019 is concerned.

The various submissions made by the petitioner, seeking to allege malafides against the ECI and questioning the action of the ECI in not issuing the certificate by labelling it unjust and arbitrary cannot essentially form the subject matter of an election petition under the Act. As noticed hereinbefore,

the petitioner has, inter alia, sought relief against the ECI for issuing certificate for contesting the election to Barmer Parliamentary Constituency.

Hon'ble Supreme Court in *Thampanoor Ravi v. Charupara Ravi & Ors.: (1999) 8 SCC 74*, inter alia, laid down the parameters pertaining to High Courts' jurisdiction while trying an electionpetition, as under:-

> "Under Article 329(b) of the Constitution no election to a legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided by or made by the appropriate legislature. Under Section 80-A of the RP Act, the forum for adjudication of an election petition is the High Court. The scope of this provision is considered by this Court in *Upadhyaya Hargovind Devshanker v. Dhirendrasinh Varbhadrasinhji Solanki*. In that decision, the question was whether an order made on an interlocutory application in an election petition could be the subject of a Letters Patent Appeal. It was observed in that decision that conferment of power under the RP Act to try any election petition does not amount to enlargement of the existing jurisdiction of the High Court. The jurisdiction exercisable under the RP Act is a special jurisdiction conferred of the High Court by virtue of Article 329(b) of the Constitution. Therefore, even though the High Court may otherwise exercise ordinary and extraordinary jurisdiction it would be difficult to envisage a situation that while trying an election petition in exercise of the jurisdiction conferred by the RP Act it can adjudicate upon the vires of the RP Act or any rule or order made thereunder and the election petition has to be tried in accordance with the provisions of the RP Act and thus the court cannot entertain and pronounce upon matters which do not fall within the ambit of Section 100of the RP Act."
>
> (emphasis supplied)

As such, the entire emphasis laid by the petitioner seeking to allege malafides against the ECI in not issuing the requisite certificate in time and to claim that as the Returning Officer is representative of the ECI, they cannot take benefit of their own wrong, is of no consequence as while trying the election petition under the provisions of the Act, the said aspect essentially, cannotbe determined by this Court. The jurisdiction of this Court in the present case is confined to examine as to whether the nomination of the petitioner was wrongly rejected. Qua the said aspect, allegations made against the ECI, cannot come to the aid of the petitioner.

In view of the above discussion, it is apparent that in view of the express provisions of Section 33(3) of the Act, for lack of requisite certificate issued by the ECI, the petitioner was disqualified to contest the election and, therefore, it cannot be said that the Returning Officer wrongly rejected the nomination of the petitioner for Barmer Parliamentary Constituency on 10.04.2019.

Consequently, both the issues as framed, are decided against the petitioner.

In view of the findings recorded hereinbefore, the election petition has no substance, the same is, therefore, dismissed with costs.

(ARUN BHANSALI),J

PKS/-

By order,

RAHUL SHARMA
PRINCIPAL SECRETARY
ELECTION COMMISSION OF INDIA.

राज्य केन्द्रीय मुद्रणालय, जयपुर ।